

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CECILIO LUVIANO-CARDENAS,
#28787-359

§

VS.

§

CIVIL ACTION NO. 4:09cv410
CRIM. NO. 4:07cr216(1)

UNITED STATES OF AMERICA

§

ORDER OF DISMISSAL

Movant filed the above-styled and numbered *pro se* motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 asserting his counsel was ineffective. United States Magistrate Judge Don D. Bush issued a Report and Recommendation recommending that Movant be allowed an out-of-time appeal based on Movant's assertion that his attorney failed to perfect an appeal after Movant requested that he do so. Movant does not seem to realize that he is being granted relief in this lawsuit by being granted an out-of-time appeal as he filed objections. The concerns he raises in his objections may be irrelevant following his appeal that is granted herein.

The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court. It is therefore

ORDERED that Movant be allowed to file an out-of-time appeal and that his motion to vacate, set aside or correct sentence is **DISMISSED** without prejudice. It is also

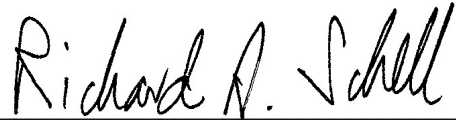
ORDERED that the Clerk shall reinstate the judgment of conviction in Movant's criminal case on the docket of that cause. That is, the Clerk shall re-enter the original judgment of conviction in the criminal case, as of the date of entry of the final judgment in this § 2255

proceeding. **Movant shall have ten days from the date of reinstatement of the judgment of conviction in which to file a notice of appeal or motion under Rule 4(b)(4), Fed. R. App. Pro.**

Finally, it is

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this the 28th day of September, 2012.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The middle initial "A." is written in a smaller, simpler script. The last name "Schell" is written with a large, prominent "S" and a long, sweeping tail that extends to the right.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE